for certain particulars from the plaintiff. Reading that letter I cannot myself see that it is anything more than interrogatories and does not indicate what defence the defendants were intending to adopt, if any. I find myself completely unable to say why the learned Judge awarded the costs which he did. It was his discretion and he has exercised it.

O. 14 r. 9(b) appears to me to imply that the only condition justifying an order for payment for costs forthwith is where the plaintiff in the opinion of the Judge knew that the defendants relied on a contention which would entitle them to unconditional leave to defend. Nothing in the proceedings has been pointed out to me which leads me to the conclusion that the learned Judge had formed such an opinion. Since the order is silent as to when the costs shall be paid I do not consider it open to me to infer merely from the fact that it was possible to tax the costs forthwith that the costs should necessarily be payable forthwith.

The application is allowed with costs for the plaintiff in any event.

By consent this decision is also binding upon the parties to similar applications in Civil Suits 150, 151, 160, 163 and 164/58. In those suits the plaintiff is granted the order prayed.

Application allowed.

Solicitors: *B. P. Khoo; Kam Woon Wah.*

CASSIM BIN OSMAN v. PUBLIC PROSECUTOR

[C.A. (Thomson C.J., Smith and Syed Sheh Barakbah JJ.) October 7, 1958]

[Penang — F.M. Criminal Appeal No. 24 of 1958]

Criminal Law and Procedure — Murder trial — Summing up — Direction by trial Judge as to the ingredients of the offence of murder.

In a murder trial it is not incumbent on the trial Judge to explain to the jury at length the whole law relating to murder or indeed to go any further in dealing with the ingredients of murder than is necessary to enable the jury to answer intelligently the questions of whether or not the accused is guilty or not guilty of that offence or, if it arises, whether he is guilty or not guilty of some other offence.

A summing up is not a dissertation upon the law, but must have reference to the way in which each case has been conducted at the trial.

Hashim bin Mat Isa v. Public Prosecutor[1] and *Manap bin Ali v. Public Prosecutor*[2] distinguished.

Cases referred to:—

(1) *Hashim bin Mat Isa v. Public Prosecutor*, (1950) M.L.J. 94.

(2) *Manap bin Ali v. Public Prosecutor*, (1958) M.L.J. 300.

(3) *R. v. Hampton*, 2 Cr. App. R. 274, 276.

COURT OF APPEAL.

M. Abraham for the appellant.

H. S. Ong (Federal Counsel) for the respondent.

Thomson C.J.: — This appellant was tried at Penang Assizes for the murder of a woman Tan Chye Hoey on 4th March, 1958, at Sungei Star, Nibong Tebal, in contravention of section 302 of the Penal Code. On 19th July, 1958, he was convicted on the unanimous verdict of the jury and sentenced to death. He appealed against his conviction and we dismissed his appeal on 2nd September, 1958.

Briefly, the evidence for the prosecution was that on the night of 4th March the woman Tan Chye Hoey left her home at Sungei Udang and was last seen alive walking along a road which would have taken her past the house of the appellant's father. When her absence caused alarm a search for her was organized by her husband and some neighbours and on the night of the 5th March the search party visited the house of appellant's father where they found the appellant. The appellant, who apparently had some sort of a reputation as a magician, purported to exercise his powers as such and went into a trance. He then led the search party to a padi field about a mile from his father's house where they found the body of the missing woman under a pile of straw. The face of the woman had been completely battered in by several blows probably inflicted with considerable force by a heavy blunt instrument. The lower part of the body was naked and there were suggestions of non-forcible sexual interference. There were abrasions on the left wrist consistent with bangles having been forcibly removed. The medical officer who examined the body the next morning was of the opinion that death had occurred probably not less than 24 hours and not more than 48 hours before the time of his examination.

The appellant was arrested on the morning of 9th March, 1958, and the same morning he conducted Police officers to a bush in the garden of his father's house where they found a cigarette tin containing two bracelets and a gold ring which were said to have belonged to the deceased woman and which she was said to have

been wearing on the last day of her life. Later he conducted the Police officers to a pile of coconut husks some five hundred yards from where the body had been found where, under the husks, they found the torn-up identity card of the deceased woman.

On 1st April, 1958, the appellant made a statement to the Magistrate at Butterworth, the gist of which was that on the night of 4th April the deceased woman had invited him to go with her to the padi field where her body was later found and had repeatedly invited him to beat her. In the event he let himself be persuaded to do so but did not realise fully what he was doing or that he had killed her.

The appellant's defence at the trial was that he had been away from home and only returned to his father's house on the afternoon of 4th March. He did not leave the house at all that night. He admitted that the following night, at the request of the search party, he went into a trance but said that he was unable to discover anything by doing so and that although he joined the search party in searching for the missing woman he played no part in discovering her body. He denied leading the Police Officers to the place where they found the jewellery and the identity card. With regard to his statement to the Magistrate he alleged that he made this in consequence of having been tortured by a Police officer and that it was untrue.

The evidence was dealt with by the learned trial Judge in a long, careful and accurate summing-up and, as has been said, the jury unanimously found the appellant guilty.

Before us the conviction was attacked with much ability by counsel for the appellant on a number of grounds. With only two of these, however, do we consider it necessary to deal in greater detail than to say that in our opinion they were without substance.

In the first place it was said that the appellant's statement to the Magistrate at Butterworth was wrongly admitted in evidence.

It was not in dispute that this statement was in fact made and that the Magistrate, who was of the appellant's own race, was satisfied that it was made voluntarily. There was, however, a certain conflict of testimony as to the circumstances which led out to its being made.

The appellant was arrested on 9th March, 1958. The following day he was taken at his own request before the Magistrate at Nibong Tebal and said he wished to make a confession. In the course of preliminary discussion he alleged he had been beaten by the Police and the Magistrate thereupon declined to take any further statement and sent him back to custody. He was then detained at the Nibong Tebal Police Station until 14th March, 1958, when he was transferred to the Central Police Station at Butterworth where he was detained until 1st April. There was nothing unlawful in this as the Butterworth Police Station is gazetted as a prison. On the evening of 31st March he was interrogated for some considerable time by the Police officer in charge of the investigation. He alleged that in the course of that interrogation he was tortured and in consequence agreed to make a statement to the Magistrate, which he in fact made the following day, which, he says, was dictated to him by the Police officer.

The trial Judge was satisfied on the evidence that the allegation of torture was completely without foundation and although he took the view that the appellant should not have been interrogated as he was, yet he was satisfied that no threat or promise was made to induce him to confess. He was also impressed by the improbability that if the Police officer had invented a story to put into the appellant's mouth he should have invented one of such an extraordinary nature and which fell far short of being an admission of the crime of murder. In the event he was satisfied that the statement had been made voluntarily and he accordingly admitted it, although in the course of summing-up to the jury he invited them to take into consideration the evidence as to the circumstances in which it had been made when they came to consider the evidential weight to be attached to it.

In all the circumstances we were not prepared to say that the statement was wrongfully admitted.

In the second place it was urged upon us that the summing-up was defective in that it did not sufficiently direct the jury as to the ingredients of the offence of murder with which the appellant was charged. In that connection our attention was invited to the case of *Hashim bin Mat Isa v. Public Prosecutor*[1] (an assessor case prior to 1954) where it was said that:—

> "In summing-up in a murder case, a trial Judge must direct the Assessors regarding the ingredients of the murder, and if he does not do so, the absence of such a direction must be fatal to a conviction"

and to the case of *Manap bin Ali v. Public Prosecutor*[2] where it was said:—

> "It is settled law.....that in summing-up in a murder case a trial Judge must direct the jury regarding

the ingredients of the offence of murder, and if he does not do so, the absence of such a direction must be fatal to a conviction."

Before proceeding further two observations require to be made regarding these cases.

The first of these is that each of them is to be considered in the light of its own particular facts.

In *Hashim's* case it was never in question that the accused killed the deceased, but there was considerable controversy at the trial as to his state of mind at the material time. The trial Judge failed to point out to the assessors the necessity for the prosecution to prove intention or knowledge in terms of section 300 of the Penal Code and it was this that was held to be a fatal non-direction.

In *Manap's* case the defence was that though the accused, who was himself seriously injured, was admittedly in company with the deceased woman at the time when she met her death, he had no knowledge as to how she and himself came by their injuries. Again the trial Judge in effect treated killing and murder as being the same thing and gave no direction at all on the question of intention.

The second observation to be made is that in neither case is there any suggestion that in a murder trial it is incumbent on the trial Judge to explain to the jury at length the whole law relating to murder or indeed to go any further in dealing with the ingredients of murder than is necessary to enable the jury to answer intelligently the questions of whether or not the accused is guilty or not guilty of that offence or, if it arises, whether he is guilty or not guilty of some other offence. As was said by Lord Alverstone, L.C.J., in the case of *Hampton*,[3]

"A summing-up is not a dissertation upon the law, but must have reference to the way in which each case has been conducted at the trial."

The present case was conducted throughout on the basis that it was a case of murder or nothing and it was on that basis that, in our opinion quite rightly, it was in the end put to the jury by the trial Judge. It was the case for the prosecution that the nature of the dead woman's injuries showed that she had been deliberately battered to death by some person using a heavy blunt instrument with considerable force and that the evidence as a whole pointed irresistibly to the conclusion that the person who had thus deliberately killed her was the appellant. The defence was one of *alibi* and that it was not the appellant who had killed her.

In the circumstances it is not surprising that the trial Judge did not find it necessary to deal at any great length with the law by which the jury were to be guided. He pointed out that the accused was charged with murder and that there could be no question of a verdict of manslaughter:

"The issue before you is a straightforward one of guilty of murder or not guilty at all."

He went on to explain that observation by discussing the evidence (which was uncontradicted) as to the circumstances and condition in which the body was found, and concluded that portion of his summing-up by saying:—

"You may well think and, indeed, have no doubt whatever, that the person who inflicted those savage and brutal injuries on her had only one intention, and that was to kill her. So it is for that reason that I say that the only issue for you is one of guilty or not guilty of murder."

He then went on to point out that it was the duty of the prosecution to prove the charge of murder against the accused beyond all reasonable doubt and that it was not for the accused to prove his innocence. He then proceeded to deal with the evidence at length.

It is easy to imagine circumstances in which the direction which has been quoted would have been woefully inadequate. What we were concerned with, however, was the particular circumstances of the present case and in these we were satisfied that no reasonable jury could have been in two minds as to the question which they had to answer and that was whether or not they were satisfied that it was the appellant who had inflicted the fatal injuries on the dead woman and that he could only have done so with the intention of killing her.

Appeal dismissed.

Re PETER WONG; Ex parte the DEBTOR

[C.A. (Chua, Wee Chong Jin and Ambrose JJ.) October 15, 1958]

[Singapore — Civil Appeal No. 3 of 1958]

Bankruptcy — Bankruptcy Ordinance (Cap. 11), s.104 — Power of Court to annul adjudication where debtor ought not to have been adjudged bankrupt is discretionary.

This was an appeal by Peter Wong, a debtor, against a decision of the High Court reported in (1958) M.L.J. 116. He applied to the High Court to annul the adjudication order and rescind the receiving order made against him. The ground of his application was that the act of bankruptcy alleged in the petition, namely, the Sheriff's *nulla bona* return, was not a valid act of bankruptcy, as he was, at the date of the return,